

Robert Greene Sterne  
Jorge A. Goldstein  
David K.S. Comwell  
Robert W. Esmond  
Tracy-Gene G. Durkin  
Michele A. Cimbalà  
Michael B. Ray  
Robert E. Sokohl  
Eric K. Steffe  
Michael Q. Lee  
Steven R. Ludwig  
John M. Covert  
Linda E. Horner  
Robert C. Millonig  
Donald J. Featherstone  
Timothy J. Shea, Jr  
Michael V. Messinger  
Judith U. Kim

Patrick E. Garrett  
Jeffrey T. Helvey  
Heidi L. Kraus  
Eldora L. Ellison  
Thomas C. Fiala  
Donald R. Banowitz  
Peter A. Jackman  
Jeffrey S. Weaver  
Brian J. Del Buono  
Edward W. Yee  
Vincent L. Capuano  
Virgil Lee Beaton  
Theodore A. Wood  
Elizabeth J. Haanes  
Joseph S. Ostroff  
Frank R. Cottingham  
Rae Lynn P. Guest  
Daniel A. Klein

Jason D. Eisenberg  
Michael D. Specht  
Tracy L. Muller  
Jon E. Wright  
LuAnne M. DeSantis  
Ann E. Summerfield  
Helene C. Carlson  
Cynthia M. Bouchez  
Timothy A. Doyle  
Gaby L. Longworth  
Lori A. Gordon  
Laura A. Vogel  
Bryan S. Wade  
Bashir M.S. Ali  
Shannon A. Carroll  
Matthew E. Kelley  
Michelle K. Holoubek  
Marsha A. Rose

Christopher J. Walsh  
W. Blake Coblenz  
James J. Pohl\*  
Young Tang  
John T. Haran\*  
Mark W. Rygiel

**Registered Patent Agents\***  
Karen R. Markowicz  
Matthew J. Dowd  
Katrina Yujian Pei Quach  
Bryan L. Skelton  
Robert A. Schwartzman  
Victoria S. Rutherford  
Simon J. Elliott  
Julie A. Heider  
Mita Mukherjee  
Scott M. Woodhouse

Liliana Di Nola-Baron  
Peter A. Socarras  
Jeffrey K. Mills  
Danielle L. Letting  
Lori Brandes

**Of Counsel**  
Edward J. Kessler  
Kenneth C. Bass III  
Marvin C. Guthrie

\*Admitted only in Maryland  
\*Admitted only in Virginia  
•Practice Limited to  
Federal Agencies

June 12, 2006

**WRITER'S DIRECT NUMBER:**  
(202) 772-7834

**INTERNET ADDRESS:**  
BHAANES@SKGF.COM

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Art Unit 1621**  
**Mail Box: Issue Fee**

Re: Allowed U.S. Patent Application  
Application No. 09/937,604; § 371 Date: September 26, 2001  
For: **Adjuvant Compositions and Methods for Enhancing Immune Responses to Polynucleotide-Based Vaccines**  
Inventor: Carl J. Wheeler  
Our Ref: 1530.0310002/EKS/EJH

Sir:

Transmitted herewith for appropriate action are the following documents:

1. Petition Under 37 C.F.R. § 1.181 along with Exhibits A-K; and
2. Return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

Commissioner for Patents  
June 12, 2006  
Page 2

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

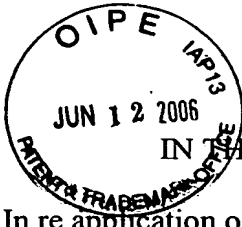
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Elizabeth J. Haanes", written over the printed name.

Elizabeth J. Haanes  
Attorney for Applicant  
Registration No. 42,613

EJH/pcd  
Enclosures

538799\_1.DOC



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Carl J. Wheeler

Appl. No.: 09/937,604

§ 371 Date: September 26, 2001

**For: Adjuvant Compositions and  
Methods for Enhancing Immune  
Responses to Polynucleotide-Based  
Vaccines**

Confirmation No.: 2136

Art Unit: 1621

Examiner: Davis, Brian J.

Atty. Docket: 1530.0310002

**Petition to Withdraw Holding of Abandonment under 37 C.F.R. §1.181(a)**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant received a Notice of Abandonment under 37 C.F.R. § 1.53(f) or (g), mailed May 4, 2006. Applicant respectfully requests reconsideration of the holding of abandonment because there has been no abandonment in fact.

***Statement of Facts***

1. On August 10, 2005, the USPTO mailed a "Notice of Allowance and Fees Due" with an attached "Determination of Patent Term Extension under 35 U.S.C. 154 (b) indicating a mailing date of August 10, 2005, and a "Notice of Allowability" in the captioned application. Also attached to this mailing were Forms PTO-1449 from Applicant's Third Supplemental Information Disclosure Statement filed on December 8, 2004 (one page) and from Applicant's Second Supplemental Information Disclosure Statement filed on October 25, 2004 (two pages), all signed by the Examiner on August 7, 2005. A copy of these documents, date stamped as received by Applicant's representatives on August 11, 2005, is attached as Exhibit A.

2. On August 18, 2005, the Examiner informed Applicant's representative by telephone that claim 1 would be subject to an obviousness-type double patenting ("ODP") rejection in light of U.S. Patent No. 6,586,409 ("the '409 patent"). The Examiner indicated that Applicant could submit a Terminal Disclaimer; otherwise the Examiner would have to issue another Office Action. *See* Memorandum of Telephone Conversation, attached hereto as Exhibit B. This telephone call was apparently not memorialized in an Interview Summary by the Examiner, as no such documentation was received by Applicant, and no such documentation is included in the Image File Wrapper for the captioned application. *See* Exhibit C, "Image File Wrapper" for U.S. Application No. 09/937,604, viewed and printed from Private PAIR on June 8, 2006.<sup>1</sup>

3. Later on August 18, 2005, Applicant's representative informed the Examiner by telephone that claim 1 of the allowed application (i.e., the captioned application) was identical to original claim 1 in U.S. Appl. No. 09/534,943 ("the '943 application", which eventually issued as the '409 patent), and that said claim 1 in the '943 application was subject to a restriction requirement, and was withdrawn from consideration in the '943 application. The Examiner indicated that he would review the '943 application file to confirm the information, and if correct, there would be no need for a Terminal Disclaimer. *See* Exhibit B. Again, this telephone call was apparently not memorialized in an Interview Summary by the Examiner. *See* Exhibit C.

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<sup>1</sup> Exhibits C and D were printed from PAIR in the "printer friendly" format, which does not include bibliographic information. Accordingly a copy of the "Bibliographic Data" for U.S. Appl. No. 09/937,604, viewed and printed from Public PAIR on June 9, 2006, is attached to each of these Exhibits.

4. The Transaction History for the captioned application, as available on Public or Private PAIR, indicates that, on August 18, 2005, the Notice of Allowance was withdrawn. *See* Exhibit D, "Transaction History" for U.S. Application No. 09/937,604, viewed and printed from Private PAIR on June 8, 2006.<sup>2</sup> Applicant notes that there is no documentation of a Withdrawal from Allowance or any other action on August 18, 2005 in the Image File Wrapper for the captioned application. *See* Exhibit C. Likewise, Applicant received no formal documentation that the application had been withdrawn from issue.

5. On September 29, 2005, Applicant received what appear to be exact duplicates of the documents originally mailed on August 10, 2005 (*see* Paragraph 1, *supra* and Exhibit A). A copy of these documents, date stamped as received by Applicant's attorneys on September 29, 2005, is attached as Exhibit E. Applicant notes that the documents received on September 29, 2005 are listed as being mailed on August 10, 2005. While there is no indication in the Transaction History (Exhibit D) that anything related to the captioned application was mailed by the USPTO in September of 2005, the Image File Wrapper includes two copies each of the Notice of Allowability (listed as "Notice of Allowance and Fees Due") and Notice of Allowance and Fees Due, all dated August 10, 2005. *See* Exhibit C.

6. On October 3, 2005, the Examiner notified Applicant's representative by telephone that there would be no ODP rejection. *See* Exhibit B. Again, this telephone call was apparently not memorialized in an Interview Summary by the Examiner. *See* Exhibit C.

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<sup>2</sup> *See* n. 1.

7. On November 10, 2005, Applicant filed, via courier, the following documents at the USPTO:

1. SKGF Cover Letter;
2. Credit Card Payment Form PTO-2038;<sup>3</sup>
3. Notification of Loss of Entitlement to Small Entity Status Under 37 C.F.R. § 1.27(g)(2) When Issue Fee is Due;
4. Issue Fee Transmittal (Form PTOL-85B); and
5. One (1) return postcard.

The return postcard was date stamped "November 10, 2005" by the USPTO. Copies of these documents are attached hereto as Exhibit F. Images of Documents 1, 3, and 4 are present in the Image File Wrapper under the heading "Issue Fee Payment Recorded" dated November 10, 2005 (Exhibit C), and "Issue Fee Payment Received" is noted on November 10, 2005 in the Transaction History (Exhibit D).

8. On December 22, 2005, Applicant received yet another "Notice of Allowance and Fees Due" (Form PTOL-85). This document indicated a mailing date of December 12, 2005, and listed an Issue Fee Payment Due Date of March 12, 2006. Attached to the Form PTOL-85 were (a) a "Determination of Patent Term Extension under 35 U.S.C. 154 (b) indicating a mailing date of December 12, 2005, (b) a copy of the first page of the Bibliographic Data Sheet dated August 7, 2005; (c) what appears to be page 3 of 3 of the "Notice of Allowability" signed and dated by Examiner Davis on August 7, 2005, (d) a page entitled "Search Notes" indicated as being Part of Paper No. 080705, (e) a page entitled "Issue Classification," also indicated as being part of Paper No. 080705, and (f) a copy of the one-page Form PTO-1449 submitted by Applicant on December 8, 2004, and signed by the Examiner on August 7, 2005. These documents

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<sup>3</sup> For security reasons, the "Credit Card Payment Form PTO-2038" has been redacted to remove the credit card information of Applicant's representatives.

are attached hereto as Exhibit G. This "Notice of Allowance" was docketed by Applicant's representatives, noting that it was incomplete. *See* Exhibit H.

9. On March 12, 2006, the Docketing system of Applicant's representatives showed that an issue fee payment was due. Applicant's representatives noted that the November 10, 2005 issue fee payment was documented on the PAIR system, and that the issue fee thus did not need to be paid again. *See* Exhibit I.

10. On May 4, 2006, Applicants received a Notice of Abandonment for failure to pay the issue fee. *See* Exhibit J. A series of telephone calls were placed to the USPTO Petitions Office and to the Examiner on May 31, 2006. *See* Memorandum of Telephone Conversation (two pages) attached hereto as Exhibit K. The Examiner apparently agreed that the December 12, 2005 Notice of Allowance was issued in error, and the Petitions Attorney recommended that the best way to remedy the situation would be for Applicant to file a Petition under 27 C.F.R. § 1.181(a).

***Relief Requested***

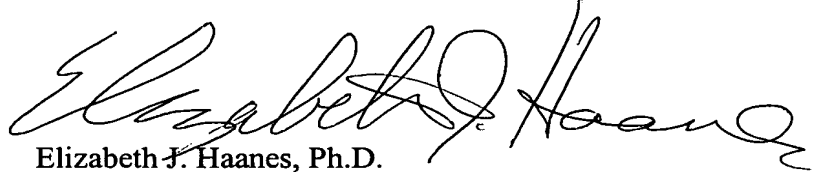
Based on the facts summarized *supra*, Applicant respectfully submits that the December 12, 2005 Notice of Allowance was issued by the USPTO in error, and that Applicant properly and timely paid the issue fee on November 10, 2005, in response to the August 10, 2005 Notice of Allowance (Exhibits A and E).

Thus, Applicant respectfully requests that the Notice of Abandonment, issued in error by the USPTO, be withdrawn and that the application be immediately returned to the publication queue for expedited issuance.

This Petition is being filed less than two months from the mailing date of the Notice of Abandonment (Exhibit J), and is therefore timely as set forth in 37 C.F.R. § 1.181(f). Accordingly, no Terminal Disclaimer is required. As set forth in M.P.E.P. § 711.03(c)I, submission of this petition does not require a fee. However, if such a fee is required, it is hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Elizabeth J. Haanes", is written over the printed name and title.

Elizabeth J. Haanes, Ph.D.  
Attorney for Applicants  
Registration No. 42,613

Date: June 12, 2006

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600





## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

08/10/2005

Sterne Kessler Goldstein & Fox  
1100 New York Avenue NW Suite 600  
Washington, DC 20005-3934

AUG 11 2005

EXAMINER

DAVIS, BRIAN J

ART UNIT

PAPER NUMBER

1621

DATE MAILED: 08/10/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136

TITLE OF INVENTION: ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$0	\$700	11/10/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

*Issue Fee, Continuing Appln, Reconsider Patent Adjustment, 312 And*  
HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or Fax (571) 273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

7590 08/10/2005

Sterne Kessler Goldstein & Fox  
1100 New York Avenue NW Suite 600  
Washington, DC 20005-3934

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136

TITLE OF INVENTION: ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	<del>YES</del> NO	<del>\$700</del> 1400	\$0	<del>\$700</del> 1400	11/10/2005
EXAMINER	ART UNIT	CLASS-SUBCLASS			
DAVIS, BRIAN J	1621	514-642000			

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. Sterne, Kessler, Goldstein
2. & Fox P.L.L.C.
3. \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

VICAL INCORPORATED

San Diego, California

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☒ Advance Order - # of Copies 10

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☒ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 19-0036 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ☒ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Date November 9, 2005

Typed or printed name Aaron L. Schwartz

Registration No. 48,181

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136
7590 08/10/2005				
Sterne Kessler Goldstein & Fox 1100 New York Avenue NW Suite 600 Washington, DC 20005-3934			EXAMINER DAVIS, BRIAN J	
			ART UNIT 1621	PAPER NUMBER
DATE MAILED: 08/10/2005				

## Determination of Patent Term Extension under 35 U.S.C. 154 (b) (application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

# Notice of Allowability

Application No.

09/937,604

Examiner

Brian J. Davis

Applicant(s)

WHEELER, CARL J.

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's RCE (10/25/04).
2. ☒ The allowed claim(s) is/are 1,67-83 [renumbered 1-18].
3. ☒ The drawings filed on 25 October 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 10/25/04; 12/06/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

880

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/25/04 has been entered.

### ***Information Disclosure Statement***

The AR reference on the 10/25/04 IDS has been lined through as it is essentially a duplicate of the AI3 reference of the 12/6/04 IDS. That is, PGPub 2004/0209241 is the published application of application number 10/738,986.

### ***Allowable Subject Matter***

Claims 1 and 67-83 remain allowed for reasons of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

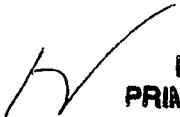
Art Unit: 1621

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Davis whose telephone number is 571-272-0638. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**BRIAN DAVIS**  
**PRIMARY EXAMINER**  
Brian J. Davis  
August 7, 2005

FORM PTO-1449

ATTY. DOCKET NO.  
1530.0310002/EKS/EJH/ALSAPPLICATION NO.  
09/937,604FIRST NAMED INVENTOR  
Wheeler, Carl J.SECOND SUPPLEMENTAL INFORMATION DISCLOSURE  
STATEMENT§ 371 DATE  
September 26, 2001ART UNIT  
1621

## U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD2	5,861,397	01/19/1999	Wheeler			
	AE2	5,910,468	06/08/1999	Nabel <i>et al.</i>			
	AF2	5,994,317	11/30/1999	Wheeler			
	AG2	6,022,874	02/08/2000	Wheeler			
	AH2	6,586,409	07/01/2003	Wheeler			
	AI2	6,696,424	02/24/2004	Wheeler			
	AJ2	6,670,332	12/30/2003	Wheeler			
	AK2	6,706,694	03/16/2004	Wolff <i>et al.</i>			

## FOREIGN PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION
	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

## OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR	15	Pending Non-Provisional United States Patent Application No. 10/738,986, Hermansen <i>et al.</i> , filed December 19, 2003 ( <del>NOT PUBLISHED</del> ) <span style="float: right;">(2009020914)</span>				
BJP	AS	15	Pending Non-Provisional United States Patent Application No: 10/843,656, Vilalta <i>et al.</i> , filed May 12, 2004 (NOT PUBLISHED)				
	AT						

EXAMINER

DATE CONSIDERED

8/7/05

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

FORM PTO-1449  SECOND SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT	ATTY. DOCKET NO. 1530.0310002/EKS/EJH/ALS	APPLICATION NO. 09/837,804
	FIRST NAMED INVENTOR Wheeler, Carl J.	
	§ 371 DATE September 26, 2001	ART UNIT 1621

## U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
BDD	AA3	6,228,844 B1	05/08/2001	Wolff et al.			
	AB3	2002/0019358 A1	02/14/2002	Manthorpe et al.			
	AC3	2003/0032615 A1	02/13/2003	Felgner et al.			
	AD3	2003/0186913 A1	10/02/2003	Wolff et al.			
	AE3	2003/0203863 A1	10/30/2003	Hobart et al.			
	AF3	2004/0157789 A1	08/12/2004	Geall et al.			
	AG3	2004/0162256 A1	08/19/2004	Geall et al.			
	AH3	2004/0171572 A1	09/02/2004	Wheeler			
	AI						
	AJ						
	AK						

## FOREIGN PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION
	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

## OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR		
	AS		
	AT		

EXAMINER 	DATE CONSIDERED 8/7/05
--	------------------------

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.



Page 1 of 1

FORM PTO-1449

**THIRD SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

01PE

DEC 06 2004

PATENT & TRADEMARK

ATTY. DOCKET NO.  
1530.0310002/EKS/EJH/ALS

FIRST NAMED INVENTOR  
Wheeler, Carl J.

§ 371 DATE  
September 26, 2001

APPLICATION NO.  
09/937,604

ART UNIT  
1621

### U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
B3b	AI3	2004/0209241 A1	10/21/04	Hermanson et al.			
	AJ						
	AK						

### FOREIGN PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION
	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

### OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR		
	AS		
B3b	AT15		Pending Non-Provisional United States Patent Application No. 10/965,238, Hobart et al., filed October 15, 2004 <del>(NOT PUBLISHED)</del> <span style="float: right;">(20050065107)</span>

EXAMINER <span style="float: right;">h</span>	DATE CONSIDERED 8/7/05
---	------------------------

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

**EXHIBIT F**

**Applicant:** Carl J. Wheeler  
**Application No.:** 09/937,604  
**§ 371 Date:** September 26, 2001  
**For:** Adjuvant Compositions and Methods for  
Enhancing Immune Responses to  
Polynucleotide-Based Vaccines

**Due Date:** November 10, 2005  
**Art Unit:** 1621  
**Confirmation No.:** 2136  
**Examiner:** Davis, Brian J.  
**Docket:** 1530.0310002/EKS/EJH/ALS  
**Atty:** ALS

When receipt stamp is placed hereon, the USPTO acknowledges receipt of the following documents:

1. SKGF Cover Letter;
2. Credit Card Payment Form PTO-2038;
3. Notification of Loss of Entitlement to Small Entity Status Under 37 C.F.R. § 1.27(g)(2) When Issue Fee is Due;
4. Issue Fee Transmittal (Form PTOL-85B); and
5. One (1) return postcard.

**Mail Stop: Issue Fee**

**Please Date Stamp and Return to Our Courier**

**Applicant:** Carl J. Wheeler

**Application No.:** 09/937,604

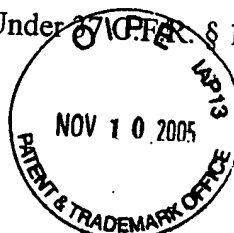
**§ 371 Date:** September 26, 2001

**For:** Adjuvant Compositions and Methods for  
Enhancing Immune Responses to  
Polynucleotide-Based Vaccines

**Due Date:** November 10, 2005  
**Art Unit:** 1621  
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**Examiner:** Davis, Brian J.  
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**Please Date Stamp and Return to Our Courier**

**Mail Stop: Issue Fee**

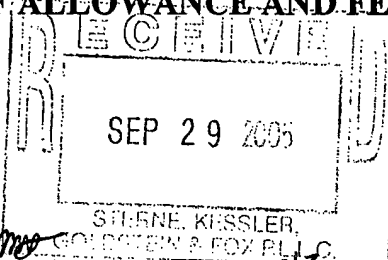


## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 08/10/2005  
Sterne Kessler Goldstein & Fox  
1100 New York Avenue NW Suite 600  
Washington, DC 20005-3934



EXAMINER

DAVIS, BRIAN J

ART UNIT

PAPER NUMBER

1621

DATE MAILED: 08/10/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136

TITLE OF INVENTION: ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$0	\$700	11/10/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

*Issue Fee, continuing, Apply, Reconsider Patent Adjustment, 3/2 Amdt*  
HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

*November 10, 2005*  
If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

**DOCKETED**

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

Page 1 of 1

FORM PTO-1449 **THIRD SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

DEC 08 2004

ATTY. DOCKET NO. 1530.0310002/EKS/EJH/ALS  
 APPLICATION NO. 09/937,604  
 FIRST NAMED INVENTOR Wheeler, Carl J.  
 § 371 DATE September 26, 2001  
 ART UNIT 1621

### U.S. PATENT DOCUMENTS

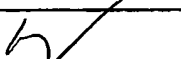
EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
Bjb	AI3	2004/0209241 A1	10/21/04	Hermanson et al.			
	AJ						
	AK						

### FOREIGN PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION
	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

### OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR		
	AS		
Bjp	AT15		Pending Non-Provisional United States Patent Application No. 10/965,238, Hobart et al., filed October 15, 2004 (NOT PUBLISHED) <sup>(20050065107)</sup>

EXAMINER  DATE CONSIDERED 8/7/05

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

FORM PTO-1449

ATTY. DOCKET NO.  
1530.0310002/EKS/EJH/ALSAPPLICATION NO.  
09/937,604FIRST NAMED INVENTOR  
Wheeler, Carl J.SECOND SUPPLEMENTAL INFORMATION DISCLOSURE  
STATEMENT§ 371 DATE  
September 28, 2001ART UNIT  
1621

## U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD2	5,861,397	01/19/1999	Wheeler			
	AE2	5,910,488	06/08/1999	Nabel <i>et al.</i>			
	AF2	5,994,317	11/30/1999	Wheeler			
	AG2	6,022,874	02/08/2000	Wheeler			
	AH2	6,586,409	07/01/2003	Wheeler			
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	AJ2	6,670,332	12/30/2003	Wheeler			
	AK2	6,706,694	03/16/2004	Wolff <i>et al.</i>			

## FOREIGN PATENT DOCUMENTS

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	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

## OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR	15	Pending Non-Provisional United States Patent Application No. 10/738,986, Hermansen <i>et al.</i> , filed December 19, 2003 ( <del>NOT PUBLISHED</del> )				
BJD	AS	15	Pending Non-Provisional United States Patent Application No. 10/843,656, Vilalta <i>et al.</i> , filed May 12, 2004 (NOT PUBLISHED)				
	AT						

EXAMINER

DATE CONSIDERED

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

FORM PTO-1449  <b>SECOND SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT</b>	ATTY. DOCKET NO. 1530.0310002/EKS/EJH/ALS	APPLICATION NO. 09/937,604
	FIRST NAMED INVENTOR Wheeler, Carl J.	
	§ 371 DATE September 26, 2001	ART UNIT 1621

## U.S. PATENT DOCUMENTS


EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
BJD	AA3	6,228,844 B1	05/08/2001	Wolff <i>et al.</i>			
	AB3	2002/0019358 A1	02/14/2002	Manthorpe <i>et al.</i>			
	AC3	2003/0032615 A1	02/13/2003	Felgner <i>et al.</i>			
	AD3	2003/0186913 A1	10/02/2003	Wolff <i>et al.</i>			
	AE3	2003/0203863 A1	10/30/2003	Hobart <i>et al.</i>			
	AF3	2004/0157789 A1	08/12/2004	Geall <i>et al.</i>			
	AG3	2004/0162256 A1	08/19/2004	Geall <i>et al.</i>			
	AH3	2004/0171572 A1	09/02/2004	Wheeler			
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	AJ						
	AK						

## FOREIGN PATENT DOCUMENTS

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	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No

## OTHER (Including Author, Title, Date, Pertinent Pages, etc.)

	AR		
	AS		
	AT		

EXAMINER 	DATE CONSIDERED 8/7/05
--	------------------------

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
 Attorneys At Law  
 1100 New York Ave., N.W.  
 Washington, D.C. 20005-3934

File No.	1530.0310002

8/18/05

### Memorandum of Telephone Conversation

Call No.	Date	Call From	Call To	Phone No.	Return Call?	Time Beg.	Time End	Status
1.	8/18/05	Exmr. Davis	Als			3:30 pm		IN
2.	"	Als	Exmr Davis	571-272-0638		4:54 pm	4:58 pm	IN
3.	10/2/05	"	"	"				
4.								

\*Not in, line busy, call returned, left message (=lm), etc.

### NOTES

Call No.

1.	Examiner Davis called to inform me that claim 1 would be subject to an ODP rejection in light of US 6,586,409. Informed me that we could submit a Term. Disclaimer over this patent, or he would issue another OA.
2.	Informed Examiner Davis that Claim 1 of the captioned allowed application is identical to claim 1, which was part of a non-elected group in the '409 patent. Examiner Davis indicated that he would have to order up the file and confirm this information; and if correct, there would be no need for a TD. Examiner Davis would get back to me w/in about a week or so.
3.	Exmr. Davis indicates that there is no outstanding ODP rejection.
4.	

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.**

### Available Documents

Mail Room Date	Document Description	Document Category	Page Count
05-04-2006	<b>Abandonment</b>	<b>PROSECUTION</b>	<b>2</b>
01-10-2006	Bibliographic Data Sheet	PROSECUTION	1
12-12-2005	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
11-01-2005	Issue Fee Payment Recorded	PROSECUTION	4
08-10-2005	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
08-10-2005	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
08-10-2005	List of References cited by applicant and considered by examiner	PROSECUTION	3
08-10-2005	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
08-10-2005	Search information including classification, databases and other search related notes	PROSECUTION	1
08-10-2005	Bibliographic Data Sheet	PROSECUTION	2
08-10-2005	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
08-10-2005	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
08-10-2005	List of References cited by applicant and considered by examiner	PROSECUTION	3
08-10-2005	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
08-10-2005	Search information including classification, databases and other search related notes	PROSECUTION	1
08-10-2005	Bibliographic Data Sheet	PROSECUTION	2
08-07-2005	Examiner's search strategy and results	PROSECUTION	1
08-07-2005	Examiner's search strategy and results	PROSECUTION	1
12-06-2004	Information Disclosure Statement (IDS) Filed	PROSECUTION	5
10-25-2004	Request for Continued Examination (RCE)	PROSECUTION	3
10-25-2004	Miscellaneous Incoming Letter	PROSECUTION	1
10-25-2004	Authorization for Extension of Time all replies	PROSECUTION	1
10-25-2004	Drawings	PROSECUTION	13
10-25-2004	Information Disclosure Statement (IDS) Filed	PROSECUTION	6
07-26-2004	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
07-26-2004	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	4
07-26-2004	Search information including classification, databases and other search related notes	PROSECUTION	1
07-26-2004	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	2
05-14-2004	Amendment - After Non-Final Rejection	PROSECUTION	1
05-14-2004	Specification	PROSECUTION	3
05-14-2004	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	13
05-14-2004	Sequence Listing	PROSECUTION	1
05-14-2004	Miscellaneous Incoming Letter	PROSECUTION	2
05-14-2004	Abstract	PROSECUTION	1
02-26-2004	Non-Final Rejection	PROSECUTION	4
02-26-2004	List of References cited by applicant and considered by examiner	PROSECUTION	15
02-26-2004	Search information including classification, databases and other search related notes	PROSECUTION	1
02-26-2004	Index of Claims	PROSECUTION	1
02-19-2004	Examiner's search strategy and results	PROSECUTION	16
11-03-2003	Transmittal to TC	PROSECUTION	2



11-03-2003	Response to Election / Restriction Filed	PROSECUTION	4
11-03-2003	Information Disclosure Statement (IDS) Filed	PROSECUTION	3
11-03-2003	NPL Documents	PRIOR ART	288
10-01-2003	Requirement for Restriction/Election	PROSECUTION	4
04-07-2003	Miscellaneous Incoming Letter	PROSECUTION	1
04-07-2003	Oath or Declaration filed	PROSECUTION	2
03-27-2003	Miscellaneous Incoming Letter	PROSECUTION	3
03-27-2003	Amendment - After Non-Final Rejection	PROSECUTION	1
03-27-2003	Claims	PROSECUTION	4
03-27-2003	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	3
01-24-2003	NPL Documents	PRIOR ART	95
01-24-2003	NPL Documents	PRIOR ART	94
01-24-2003	NPL Documents	PRIOR ART	106
01-24-2003	NPL Documents	PRIOR ART	109
01-24-2003	NPL Documents	PRIOR ART	71
01-24-2003	NPL Documents	PRIOR ART	131
01-24-2003	Foreign Reference	PRIOR ART	64
01-24-2003	NPL Documents	PRIOR ART	6
01-24-2003	NPL Documents	PRIOR ART	10
01-24-2003	NPL Documents	PRIOR ART	12
01-24-2003	NPL Documents	PRIOR ART	8
01-24-2003	NPL Documents	PRIOR ART	4
01-24-2003	NPL Documents	PRIOR ART	10
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01-24-2003	NPL Documents	PRIOR ART	12
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01-24-2003	NPL Documents	PRIOR ART	6
01-24-2003	NPL Documents	PRIOR ART	10
01-24-2003	NPL Documents	PRIOR ART	6
01-24-2003	NPL Documents	PRIOR ART	10
01-24-2003	NPL Documents	PRIOR ART	199
01-24-2003	NPL Documents	PRIOR ART	5
01-24-2003	Information Disclosure Statement (IDS) Filed	PROSECUTION	19
01-24-2003	Foreign Reference	PRIOR ART	57
01-24-2003	Foreign Reference	PRIOR ART	71
01-24-2003	NPL Documents	PRIOR ART	7
01-24-2003	NPL Documents	PRIOR ART	2
01-24-2003	NPL Documents	PRIOR ART	6
01-24-2003	NPL Documents	PRIOR ART	9
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01-24-2003	NPL Documents	PRIOR ART	7
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01-24-2003	NPL Documents	PRIOR ART	4
01-24-2003	NPL Documents	PRIOR ART	6
01-24-2003	NPL Documents	PRIOR ART	5

01-24-2003	NPL Documents	PRIOR ART	47
01-24-2003	NPL Documents	PRIOR ART	102
12-07-2001	Miscellaneous Incoming Letter	PROSECUTION	3
12-07-2001	Oath or Declaration filed	PROSECUTION	3
11-15-2001	Notice of DO/EO Acceptance Mailed	PROSECUTION	2
09-26-2001	NPL Documents	PRIOR ART	12
09-26-2001	NPL Documents	PRIOR ART	6
09-26-2001	NPL Documents	PRIOR ART	4
09-26-2001	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
09-26-2001	Search information including classification, databases and other search related notes	PROSECUTION	1
09-26-2001	Index of Claims	PROSECUTION	1
09-26-2001	Transmittal letter	PROSECUTION	4
09-26-2001	Specification	PROSECUTION	50
09-26-2001	Claims	PROSECUTION	6
09-26-2001	Abstract	PROSECUTION	1
09-26-2001	Oath or Declaration filed	PROSECUTION	2
09-26-2001	Drawings	PROSECUTION	14
09-26-2001	Fee Worksheet (PTO-875)	PROSECUTION	1
09-26-2001	Fee Worksheet (PTO-875)	PROSECUTION	1
09-26-2001	Claims Worksheet (PTO-2022)	PROSECUTION	1
09-26-2001	Amendment - After Non-Final Rejection	PROSECUTION	1
09-26-2001	Specification	PROSECUTION	1
09-26-2001	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
09-26-2001	Miscellaneous Incoming Letter	PROSECUTION	1
09-26-2001	Application Data Sheet	PROSECUTION	1
09-26-2001	Documents submitted with 371 Applications	PROSECUTION	26
09-26-2001	Miscellaneous Incoming Letter	AS FILED	79

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**Close Window**

Search results as of: 06-09-2006::11:10:02 E.T.

**Bibliographic Data**

Application Number:	09/937,604	Customer Number:	-
Filing or 371 (c) Date:	09-26-2001	Status:	Abandoned -- Failure to Pay Issue Fee
Application Type:	Utility	Status Date:	05-04-2006
Examiner Name:	DAVIS, BRIAN J	Location:	ELECTRONIC
Group Art Unit:	1621	Location Date:	-
Confirmation Number:	2136	Earliest Publication No:	-
Attorney Docket Number:	1530.0310002/EKS/EJH	Earliest Publication Date:	-
Class / Subclass:	514/642	Patent Number:	-
First Named Inventor:	Carl Wheeler , Arbolitos Drive, Poway, CA (US)	Issue Date of Patent:	-

Title of Invention:	ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES
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[Close Window](#)

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**Transaction History**


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<b>Date</b>	<b>Transaction Description</b>
05-04-2006	Mail Abandonment for Failure to Pay Issue Fee
05-04-2006	Abandonment for Failure to Pay Issue Fee
11-10-2005	Statement Filed Indicating a Loss of Entitlement to Small Entity Status
12-20-2005	Receipt into Pubs
11-10-2005	Issue Fee Payment Received
12-12-2005	Mail Notice of Allowance
12-09-2005	Notice of Allowance Data Verification Completed
08-18-2005	Date Forwarded to Examiner
08-18-2005	Withdrawal of Notice of Allowance
08-10-2005	Mail Notice of Allowance
08-09-2005	Notice of Allowance Data Verification Completed
08-02-2005	IFW TSS Processing by Tech Center Complete
08-02-2005	Date Forwarded to Examiner
10-25-2004	Request for Continued Examination (RCE)
08-02-2005	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)
10-25-2004	New or Additional Drawing Filed
10-25-2004	Reference capture on IDS
10-25-2004	Information Disclosure Statement (IDS) Filed
12-25-2004	Information Disclosure Statement (IDS) Filed
10-25-2004	Workflow - Request for RCE - Finish
10-25-2004	Workflow - Request for RCE - Finish
10-25-2004	Workflow - Request for RCE - Finish
11-04-2004	Receipt into Pubs
10-25-2004	Workflow incoming amendment IFW
10-25-2004	Workflow - Request for RCE - Begin
08-11-2004	Sequence Forwarded to Pubs on Tape
08-06-2004	Workflow - File Sent to Contractor
07-26-2004	Mail Notice of Allowance
07-26-2004	Mail Formal Drawings Required
07-26-2004	Mail Oath of Declaration Required
07-22-2004	Oath or Declaration Required
07-22-2004	Formal Drawings Required
07-22-2004	Notice of Allowance Data Verification Completed
07-22-2004	Case Docketed to Examiner in GAU
05-24-2004	Date Forwarded to Examiner
05-14-2004	Response after Non-Final Action
05-24-2004	CRF Is Good Technically / Entered into Database
05-14-2004	Workflow incoming amendment IFW
02-26-2004	Mail Non-Final Rejection
02-23-2004	Non-Final Rejection
02-17-2004	Case Docketed to Examiner in GAU
11-12-2003	Reference capture on IDS
11-03-2003	Information Disclosure Statement (IDS) Filed
11-12-2003	Date Forwarded to Examiner

11-03-2003 Response to Election / Restriction Filed  
10-01-2003 Mail Restriction Requirement  
09-30-2003 Requirement for Restriction / Election  
04-07-2003 Oath or Declaration Filed (Including Supplemental)  
01-24-2003 Information Disclosure Statement (IDS) Filed  
04-04-2002 X-Pre-Legal Complete Amended Case  
03-27-2002 Preliminary Amendment  
01-24-2002 X-Pre-Legal Complete New Case  
01-24-2002 Case Docketed to Examiner in GAU  
11-26-2001 Transfer Inquiry to GAU  
11-25-2001 Transfer Inquiry to GAU  
11-16-2001 IFW Scan & PACR Auto Security Review  
11-15-2001 Application Dispatched from OIPE  
11-15-2001 Correspondence Address Change  
10-10-2001 Correspondence Address Change  
09-26-2001 Initial Exam Team nn

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**Close Window**

Search results as of: 06-09-2006::11:10:02 E.T.

**Bibliographic Data**

Application Number:	09/937,604	Customer Number:	-
Filing or 371 (c) Date:	09-26-2001	Status:	Abandoned -- Failure to Pay Issue Fee
Application Type:	Utility	Status Date:	05-04-2006
Examiner Name:	DAVIS, BRIAN J	Location:	ELECTRONIC
Group Art Unit:	1621	Location Date:	-
Confirmation Number:	2136	Earliest Publication No:	-
Attorney Docket Number:	1530.0310002/EKS/EJH	Earliest Publication Date:	-
Class / Subclass:	514/642	Patent Number:	-
First Named Inventor:	Carl Wheeler , Arbolitos Drive, Poway, CA (US)	Issue Date of Patent:	-

Title of Invention:	ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES
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 www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 12/12/2005

Sterne Kessler Goldstein & Fox  
 1100 New York Avenue NW Suite 600  
 Washington, DC 20005-3934

DEC 21

EXAMINER

DAVIS, BRIAN J

ART UNIT

PAPER NUMBER

1621

DATE MAILED: 12/12/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136

TITLE OF INVENTION: ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$0	\$700	03/13/2006

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

If the SMALL ENTITY is shown as NO:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

A. Pay TOTAL FEE(S) DUE shown above, or

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

**DOCKETED**

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

Complete and send this form, together with applicable fee(s), to: Mail

**Mail Stop ISSUE FEE**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, Virginia 22313-1450**  
**or Fax (571) 273-2885**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

7590 12/12/2005

**Sterne Kessler Goldstein & Fox**  
**1100 New York Avenue NW Suite 600**  
**Washington, DC 20005-3934**

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136
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TITLE OF INVENTION: ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO POLYNUCLEOTIDE-BASED VACCINES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional	YES	\$700	\$0	\$700	03/13/2006
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EXAMINER	ART UNIT	CLASS-SUBCLASS
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DAVIS, BRIAN J	1621	514-642000
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1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.563).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/BJH	2136
7590 12/12/2005				
Sterne Kessler Goldstein & Fox 1100 New York Avenue NW Suite 600 Washington, DC 20005-3934			EXAMINER DAVIS, BRIAN J	
			ART UNIT 1621	PAPER NUMBER

DATE MAILED: 12/12/2005

## Determination of Patent Term Extension under 35 U.S.C. 154 (b) (application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.



## UNITED STATES PATENT AND TRADEMARK OFFICE

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 Alexandria, Virginia 22313-1458  
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Bib Data Sheet

CONFIRMATION NO. 2136

SERIAL NUMBER 09/937,604	FILING DATE 09/26/2001  RULE	CLASS 514	GROUP ART UNIT 1621	ATTORNEY DOCKET NO. 1530.0310002/EKS/EJH
-----------------------------	---------------------------------------	--------------	------------------------	---

## APPLICANTS

Carl J. Wheeler, Arbolitos Drive, Poway, CA;

## \*\* CONTINUING DATA \*\*\*\*\*

This application is a 371 of PCT/US00/08282 03/24/2000  
 which claims benefit of 60/126,340 03/26/1999

RJD

## \*\* FOREIGN APPLICATIONS \*\*\*\*\*

none D76

## \*\* SMALL ENTITY \*\*

Foreign Priority claimed <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	STATE OR COUNTRY CA	SHEETS DRAWING 14	TOTAL CLAIMS 1	INDEPENDENT CLAIMS 1
35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after Allowance				
Verified and Acknowledged Examiner's Signature: <u>RJD</u> Initials: _____				

## ADDRESS

Sterne Kessler Goldstein & Fox  
 1100 New York Avenue NW Suite 600  
 Washington, DC  
 20005-3934

## TITLE

ADJUVANT COMPOSITIONS AND METHODS FOR ENHANCING IMMUNE RESPONSES TO  
 POLYNUCLEOTIDE-BASED VACCINES

FILING FEE  RECEIVED 668	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees
		<input type="checkbox"/> 1.16 Fees ( Filing )
		<input type="checkbox"/> 1.17 Fees ( Processing Ext. of time )
		<input type="checkbox"/> 1.18 Fees ( Issue )
		<input type="checkbox"/> Other _____

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Davis whose telephone number is 571-272-0638. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**BRIAN DAVIS  
PRIMARY EXAMINER**

Brian J. Davis  
August 7, 2005


[REDACTED]

**Brian J. Davis**

1621

INTERFERENCE SEARCHED			
Class	Subclass	Date	Examiner
Interference Search History Printout		8/7/2005	BJD

[illegible]

<b>Issue Classification</b> 	Application/Control No.	Applicant(s)/P Reexamination	Under
	09/937,604	WHEELER, CARL J.	
	Examiner	Art Unit	
	Brian J. Davis	1621	

ISSUE CLASSIFICATION									
ORIGINAL					CROSS REFERENCE(S)				
CLASS	SUBCLASS				CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)			
514	642				564	202			
INTERNATIONAL CLASSIFICATION					424	193.1	201.1		
A	G	I	K	47/18					
A	G	I	K	39/39					
A	G	K	P	31/04					
A	G	K	P	31/21					
C	D		C	217/28					
(Assistant Examiner) (Date)					<b>BRIAN DAVIS</b> <b>PRIMARY EXAMINER</b> Brian J. Davis 8/7/05				
(Legal Instruments Examiner) (Date)									
					Total Claims Allowed: 18				
					O/G Print Claim(s)				
					1				
					O/G Print Fig				
					—				

<input checked="" type="checkbox"/> Claims renumbered in the same order as presented by applicant										<input type="checkbox"/> CPA		<input type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
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	2		32		62		92		122		152		182		
	3		33		63		93		123		153		183		
	4		34		64		94		124		154		184		
	5		35		65		95		125		155		185		
	6		36		66		96		126		156		186		
	7		37	2	67		97		127		157		187		
	8		38	3	68		98		128		158		188		
	9		39	4	69		99		129		159		189		
	10		40	5	70		100		130		160		190		
	11		41	6	71		101		131		161		191		
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	28		58		88		118		148		178		208		
	29		59		89		119		149		179		209		
	30		60		90		120		150		180		210		

FORM PTO-1449		DEC 08 2004		ATTY. DOCKET NO. 1530.0310002/EKS/EJ/HALS		APPLICATION NO. 08/937,604	
<b>THIRD SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT</b> <small>TRADEMARK</small>				FIRST NAMED INVENTOR Wheeler, Carl J.			
				§ 371 DATE September 28, 2001		ART UNIT 1621	
<b>U.S. PATENT DOCUMENTS</b>							
EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
B3b	AI3	2004/0209241 A1	10/21/04	Hermanson et al.			
	AJ						
	AK						
<b>FOREIGN PATENT DOCUMENTS</b>							
EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION
	AL						Yes No
	AM						Yes No
	AN						Yes No
	AO						Yes No
	AP						Yes No
<b>OTHER (Including Author, Title, Date, Pertinent Pages, etc.)</b>							
	AR						
	AS						
B3b	AT15		Pending Non-Provisional United States Patent Application No. 10/965,238, Hobart et al., filed October 15, 2004 <b>(NOT PUBLISHED)</b> <span style="float: right;">(20050065107)</span>				
EXAMINER					DATE CONSIDERED		
					8/7/05		
<small>EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.</small>							

DOCKET CASE LOOKUP CALENDAR DOCKETING ANNUITIES SWITCH USER STATIS

**BETSY J. HAANES**

BHAANES 6/8/2006 11:21:25 PM

**1530.0310002****Previous Comments****Add New Instruction:**Comment  **Submit**Date: **Action Details**

<b>Action</b>	ACP0000107
<b>ActionCode</b>	NOA
<b>ActionDescription</b>	NOTICE OF ALLOWANCE
<b>ActionDueDateFlag</b>	
<b>CompletedDate</b>	12/12/2005
<b>CompletedDateFlag</b>	
<b>ActionCreateDate</b>	11/14/2005 11:21:38 AM
<b>ActionCreateUser</b>	NTCORP\SNORTHIN
<b>ActionNotes</b>	WE RECVD AN INCOMPLETE NOTICE OF ALLOWANCE. IT IS MISSING THE NOTICE OF ALLOWBILITY PAGE. WE DOCKETED ACCORDINGLY. PLEASE FOLLOW UP WITH THE EXAMINER TO ISSUE A NEW COMPLETE NOTICE OF ALLOWANCE. WE DOCKETED A TWO WEEK CHECK STATUS TO FOLLOW UP.
<b>PointTK</b>	ATX0100185
<b>PointTKCode</b>	PO
<b>PointTKName</b>	PATENT OFFICE
<b>RespTK</b>	ATX0100185
<b>RespTKCode</b>	PO
<b>RespTKName</b>	PATENT OFFICE
<b>ActionUpdateDate</b>	1/9/2006 10:56:39 AM
<b>ActionUpdateUser</b>	NTCORP\MSOSA

## DOCKET CASE LOOKUP CALENDAR DOCKETING ANNUITIES SWITCH USER STATIS

**BETSY J. HAANES**

BHAANES 6/8/2006 11:24:00 PM

**1530.0310002****Previous Comments**

Status	Type	Date	Comments	By	Submitted	Rev	Rev Date	Rev Msg
	Remove	3/13/2006	issue fee paid 11/10/06; PAIR indicates receipt of issue fee	MDOWD	3/13/2006 5:38:59 PM			

**Add New Instruction:**Comment Date: **Action Details**

Action	ACP0000081
ActionCode	IFF
ActionDescription	ISSUE FEE DUE
ActionDueDate	3/12/2006
ActionDueDateFlag	
CompletedDate	11/10/2005
CompletedDateFlag	
ActionCreateDate	1/9/2006 10:56:39 AM
ActionCreateUser	NTCORP\MSOSA
DeadlineDate	3/12/2006
DeadlineDateFlag	
ActionNotes	PAID 11/10/05
PointTK	ATX0100070
PointTKCode	EKS
PointTKName	ERIC K. STEFFE
RespTK	ATX0100158



<b>RespTKCode</b>	MJD
<b>RespTKName</b>	MATTHEW J. DOWD
<b>TakenDate</b>	11/10/2005
<b>TakenDateFlag</b>	
<b>ActionUpdateDate</b>	3/31/2006 2:26:06 PM
<b>ActionUpdateUser</b>	VADAMS



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,604	09/26/2001	Carl J. Wheeler	1530.0310002/EKS/EJH	2136

7590 05/04/2006

Sterne Kessler Goldstein & Fox  
 1100 New York Avenue NW Suite 600  
 Washington, DC 20005-3934

EXAMINER

DAVIS, BRIAN J

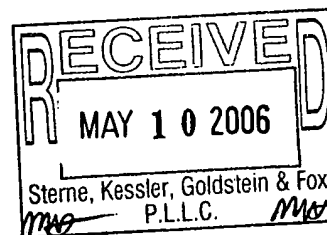
ART UNIT PAPER NUMBER

1621

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETED



EKS

MSO MSO 5/12/06

**Notice of Abandonment**

Application No.

09/937,604

Examiner

DAVIS

Applicant(s)

Wheeler

Art Unit

1621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

slk

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

# **Attachment to Notice of Abandonment**

## **For questions concerning the notice contact Office of Patent Publication**

**Image Assistance Center: 888-786-0101.**

Information is also available on the USPTO Internet web site:  
<http://www.uspto.gov/web/patents/pubs/abandonnotice.html>

### **Respond to the Notice of Abandonment by one of the following:**

#### **1. Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., a reply was in fact filed), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181 to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to 37 CFR § 1.8(b) Certificate of Mailing 37 CFR § 1.10 "Express Mail" mailing or MPEP 503 Postcard Receipt as Prima Facie Evidence. The petition should be addressed as follows:

By mail: Mail Stop: Issue Fee, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

#### **2. Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (MPEP 711.03(c) II and 37 CFR § 1.181). No fee required**

Where an applicant contends that the original Notice of Allowance and Fee(s) Due was never received, if adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

#### **3. Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) or (b) (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. The text of these rules is available on the USPTO Internet Web site. Forms for these petitions, "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a)," PTO/SB/61, and "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," PTO/SB/64, are available in the forms section of the USPTO website: <http://www.uspto.gov>.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

**Note:** Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
 Attorneys At Law  
 1100 New York Ave., N.W.  
 Washington, D.C. 20005-3934

File No.	1530.0310002
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### Memorandum of Telephone Conversation

Call No.	Date	Call From	Call To	Phone No.	Return Call?	Time Beg.	Time End	Status*
1.	5/31/06	Exr Davis	MJD	202 772 8773	Y	1500	1503	
2.								
3.								
4.								

\*Not in, line busy, call returned, left message (=lm), etc.

### NOTES

Call No.

1.	Examiner Davis returned call. He said he had e-mailed his supervisor and that his supervisor
	Had contacted publications. His supervisor had asked that publications to put the application
	Back in the queue. Examiner Davis was under the impression that his supervisor thought
	The last Notice of Allowance to be in error. MJD thanked the examiner. Examiner said to
	Get back in touch if there are any more difficulties.
2.	
3.	
4.	

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
 Attorneys At Law  
 1100 New York Ave., N.W.  
 Washington, D.C. 20005-3934

File No.	1530.0310002
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### Memorandum of Telephone Conversation

Call No.	Date	Call From	Call To	Phone No.	Return Call?	Time Beg.	Time End	Status*
1.	5/31/06	EKS/MJD	Petitions Office		N	1040	1045	
2.	"	MJD	Exr. Davis		N	1105	1106	Lm
3.	"	MJD	Petitions Office	571 272 3282	N	1223	1228	
4.	"	Exr. Davis	MJD	202 772 8773	Y	1306	1309	

\*Not in, line busy, call returned, left message (=lm), etc.

### NOTES

Call No.

1.	EKS and MJD called petition office and spoke with petitions attorney. She said that the Best option to follow was to file a petition under 181 based on our explanation of the facts.
2.	MJD left message for Examiner Davis regarding Notices of Allowance and application.
3.	MJD called Petitions Office. Spoke with petitions attorney. She confirmed that if we file A Petition under 181 and that is denied, then we could later file a petition under 137 for Unintentional abandonment.
4.	Examiner Davis returned call. MJD explained situation. He said he reviewed the file and was uncertain why the last Notice of Allowance was mailed and that it looked to be in error.
	MJD explained that Petitions attorney said one possibility was to ask examiner to withdraw The last notice of allowance. Examiner said that seemed unlikely since he wasn't sure how That would work. Exr said he will check with supervisor and get back to MJD.



AS FILED 11/10/05

Robert Greene Sterne  
Edward J. Kessler  
Jorge A. Goldstein  
David K.S. Cornwell  
Robert W. Esmond  
Tracy-Gene G. Durkin  
Michele A. Cimbalà  
Michael B. Ray  
Robert E. Sokohl  
Eric K. Steffe  
Michael Q. Lee  
Steven R. Ludwig  
John M. Covert  
Linda E. Alcorn  
Robert C. Millonig  
Donald J. Featherstone  
Timothy J. Shea, Jr.  
Michael V. Messinger

Judith U. Kim  
Patrick E. Garrett  
Jeffrey T. Helvey  
Heldi L. Kraus  
Eldora L. Ellison  
Thomas C. Flala  
Donald R. Banowitz  
Peter A. Jackman  
Jeffrey S. Weaver  
Kendrick P. Patterson  
Vincent L. Capuano  
Brian J. Del Buono  
Virgil Lee Beaton  
Theodore A. Wood  
Elizabeth J. Haanes  
Joseph S. Ostroff  
Frank R. Cottingham  
Rae Lynn P. Guest

Daniel A. Klein  
Jason D. Eisenberg  
Michael D. Specht  
Tracy L. Muller  
Jon E. Wright  
LuAnne M. DeSantis  
Ann E. Summerfield  
Helene C. Carlson  
Cynthia M. Bouchez  
Timothy A. Doyle  
Gaby L. Longworth  
Lori A. Gordon  
Nicole D. Dretar  
Ted J. Ebersole  
Laura A. Vogel  
Bryan S. Wade  
Aaron L. Schwartz  
Shannon A. Carroll\*

Wesley W. Jones\*  
Matthew E. Kelley\*  
Michelle K. Holoubek\*  
Marsha A. Rose\*  
  
**Registered Patent Agents\***  
Karen R. Markowicz  
Nancy J. Leith  
Matthew J. Dowd  
Katrina Yulian Pel Quach  
Bryan L. Skelton  
Robert A. Schwartzman  
Teresa A. Colella  
Victoria S. Rutherford  
Simon J. Elliott  
Julie A. Helder  
Mita Mukherjee  
Scott M. Woodhouse

Christopher J. Walsh  
Liliana Di Nola-Baron  
Peter A. Socarras  
Jeffrey Mills  
Danelle L. Letting

**Of Counsel**  
Kenneth C. Bass III  
Marvin C. Guthrie

\*Admitted only in Maryland  
\*Admitted only in Virginia  
\*Practice Limited to  
Federal Agencies

November 9, 2005

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**WRITER'S DIRECT NUMBER:**  
(202) 772-8619

**INTERNET ADDRESS:**  
SCHWARTZ@SKGF.COM

**Mail Stop Issue Fee**

Re: Allowed U.S. Utility Patent Application  
Appl. No. 09/937,604; § 371 Date: September 26, 2001  
For: **Adjuvant Compositions and Methods for Enhancing Immune  
Responses to Polynucleotide-Based Vaccines**  
Inventor: Carl J. Wheeler  
Our Ref: 1530.0310002/EKS/EJH/ALS

Sir:

In response to the **Notice of Allowance and Issue Fee Due** dated August 10, 2005, the following documents are forwarded for appropriate action by the U.S. Patent and Trademark Office:

1. Credit Card Payment Form PTO-2038;
2. Issue Fee Transmittal (Form PTOL-85B);
3. Notification of Loss of Entitlement to Small Entity Status Under 37 C.F.R. § 1.27(g)(2) When Issue Fee is Due; and
4. One (1) return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036. If extensions of time under 37 C.F.R. § 1.136 other than those otherwise provided for herewith are required to prevent abandonment of the present patent application, then such extensions of time are hereby

Commissioner for Patents

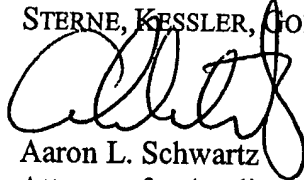
November 9, 2005

Page 2

petitioned, and any fees therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read 'A. Schwartz', is written over the printed name of Aaron L. Schwartz.

Aaron L. Schwartz  
Attorney for Applicant  
Registration No. 48,181

ALS/law  
Enclosures

460029\_1.DOC



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## United States Patent & Trademark Office

### Credit Card Payment Form

Please Read Instructions before Completing this Form

#### Credit Card Information

Credit Card Type: ☒ Visa ☐ MasterCard ☐ American Express ☐ Discover

Credit Card Account #: REDACT

Credit Card Expiration Date: REDACT

Name as it Appears on Credit Card: REDACT

Payment Amount: \$(US Dollars): 1430.00

Signature:  Date: November 9, 2005

**Refund Policy:** The Office may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be via credit to the credit card account.

**Service Charge:** There is a 50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)).

#### Credit Card Billing Address

Street Address 1: Sterne, Kessler, Goldstein & Fox P.L.L.C.

Street Address 2: 1100 New York Avenue, N.W.

City: Washington

State: D.C. Zip/Postal Code : 20005-3934

Country: U.S.A.

Daytime Phone #: (202) 371-2600 Fax #: (202) 371-2540

#### Request and Payment Information

Description of Request and Payment Information:

\$1400.00 - Issue Fee (large entity)

\$30.00 - Advanced copies of patents (10)

Patent Fee	Patent Maintenance Fee	Trademark Fee	Other Fee
Application No. 09/937,604	Application No.	Serial No.	IDON Customer No.
Patent No.	Patent No.	Registration No.	
Attorney Docket No. 1530.0310002/EKS/EJH/ALS		Identify or Describe Mark	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent & Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

REDACT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Carl J. Wheeler

Appl. No.: 09/937,604

§ 371 Date: September 26, 2001

For: **Adjuvant Compositions and  
Methods for Enhancing Immune  
Response to Polynucleotide-Based  
Vaccines**

Confirmation No.: 2136

Art Unit: 1621

Examiner: Brian J. Davis

Atty. Docket: 1530.0310002/EKS/EJH/ALS

**Notification of Loss of Entitlement to Small Entity Status  
Under 37 C.F.R. § 1.27(g)(2) When Issue Fee is Due**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

The above-captioned application is no longer entitled to small entity status. This notification is being filed prior to paying, or at the time of paying, the issue fee.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Aaron L. Schwartz  
Attorney for Applicant  
Registration No. 48,181

Date: November 9, 2005

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600  
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